

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

JOSE AND FRANCISO REYES
Respondents

Case Nos.: I-00-70331
I-00-70180

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-70331) served August 24, 2001, the Government charged Respondents Jose and Francisco Reyes with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that Respondents violated § 700.3 on August 21, 2001 at 1302 Belmont Street, N.W. (the “Property”), and sought a fine of \$1,000.

Respondents did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code

¹ 21 DCMR 700.3 provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

§§ 2-1802.02(e) and 2-1802.05). Accordingly, on September 28, 2001, this administrative court issued an order finding Respondents in default and subject to a statutory penalty \$1,000 as authorized by D.C. Official Code §§ 2-1801.04 (a)(2)(A) and 2-1802.02(f), and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Official Code § 2-1802.02(f).

The Government served the second Notice of Infraction (No. 00-70180) on October 2, 2001. On October 9, 2001, Respondents, through their counsel Louis Nichols, Esq., filed an untimely plea of Deny to the first Notice of Infraction pursuant to D.C. Official Code § 2-1801.02(a)(3), along with a request for a hearing.²

An evidentiary hearing was held on November 13, 2001. Gerard Brown, the charging inspector in the case, appeared on behalf of the Government. Louis Nichols, Esq., appeared on behalf of Respondents, along with Francisco Reyes who appeared as a witness for Respondents. At the hearing, Respondents sought leave to amend their plea from Deny to Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2) and, after informing Respondents of the implications of such an amendment and hearing no objections, I granted that request. Respondents also requested a reduction or suspension of any fines or statutory penalty.

As to the substance of the violation, Respondents represented that, due to the location of the trash receptacles on the date of the violation, their tenants sometimes had difficulty accessing those receptacles. Respondents suggest that this, as well as unauthorized dumping by unidentified passersby, may have resulted in trash not being properly containerized on the date of

² In light of Respondents' answer, the second Notice of Infraction (No. 00-70180) will be dismissed as moot.

the violation. Upon their receipt of the Notice of Infraction, Respondents state that they moved the trash receptacles to a less obstructed and more protected location, and that action has alleviated the problem.

As to Respondents' failure to timely answer the Notices of Infraction, Respondents represented that they do not reside at the Property, and that, for some unknown reason, their tenants did not provide them with the first Notice of Infraction until after the tenants also received the September 28, 2001 default order. Respondents have represented that they will provide their home address to the District of Columbia Office of Tax and Revenue so that such service problems can be avoided in the future.

Based on the entire record in this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating 21 DCMR 700.3 at the Property on August 21, 2001 by failing to properly store and containerize solid wastes "in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard." 21 DCMR 700.3.

2. Due to the location of the trash receptacles on the date of the violation, Respondents' tenants sometimes had difficulty accessing those receptacles. This, as well as unauthorized dumping by unidentified passersby, resulted in trash not being properly containerized on the date of the violation.

3. Prior to serving the first Notice of Infraction, Mr. Brown determined from the Office of the Chief Financial Officer's property assessment database that the Property's address, *i.e.*, 1302 Belmont Street, N.W., was Respondents' last known address.

4. Respondents failed to timely respond to the first Notice of Infraction. Respondents do not actually reside at the Property, and their tenants did not provide them with the first Notice of Infraction until after the tenants also received the September 28, 2001 default order. Respondents answered the first Notice of Infraction on October 9, 2001. Respondents have represented that they will provide their home address to the District of Columbia Office of Tax and Revenue so that such service problems can be avoided in the future.

5. Respondents took prompt action to comply with the requirements of 21 DCMR 700.3 upon their receipt of the Notice of Infraction.

6. Respondents have accepted responsibility for their unlawful conduct.

7. There is no evidence in the record of a history of noncompliance on the part of Respondents.

III. Conclusions of Law

1. Respondents violated 21 DCMR 700.3 on August 21, 2001. The Rodent Control Act of 2000 authorizes a fine of \$1,000 for a first violation of this regulation.³ 16 DCMR §§ 3201.1(a)(1) and 3216.1(b). In light of Respondents' acceptance of responsibility, prompt

³ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

efforts to come into compliance and the lack of evidence in the record of a history of noncompliance, I will reduce the fine to \$500. See D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.02(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

2. Respondents have also requested a reduction or suspension of the statutory penalty. The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires a respondent to demonstrate “good cause” for failing to answer a Notice of Infraction within 20 days of the date of service by mail. If the respondent cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

3. Respondents have explained that they were late in responding to the first Notice of Infraction because their tenants did not provide them with the document until after the allotted period for answering it had passed. By serving the first Notice of Infraction upon Respondents at their last known home and/or business address, Respondents were properly served as required by the Due Process Clause and the Civil Infractions Act. See D.C. Official Code §§ 2-1802.01 and 2-1802.05; *Dusenberry v. United States*, 534 U.S. 161 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep’t of Employment Services*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep’t of Employment Services*, 487 A.2d 622, 624 (D.C. 1985).

4. Because Respondents neither actually resided at the Property nor informed the Government of some other viable place of contact, it was incumbent upon them to have in place some articulable mechanism for receiving mail at the Property, particularly official correspondence from the Government. No such mechanism existed in this case, and it is

appropriate that Respondents bear the risk associated therewith. *DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 4 (Final Order, March 12, 2002).

5. Respondents, therefore, have failed to demonstrate good cause for their untimely plea. Accordingly, Respondents are liable for a statutory penalty in the amount of \$1,000, and it will be imposed without reduction.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that the second Notice of Infraction (No. 00-70180) is hereby **DISMISSED AS MOOT**; and it is further

ORDERED, that Respondents Jose Reyes and Francisco Reyes, who are jointly and severally liable, shall pay a fine and statutory penalty in the total amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 10/8/02

Mark D. Poindexter
Administrative Judge